

Message Text

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ORIGIN OES-06

INFO OCT-01 EUR-12 ISO-00 L-03 ACDA-07 CIAE-00 INR-07
IO-13 NSAE-00 NSC-05 EB-08 NRC-05 DODE-00 ERDA-05
FEA-01 PA-01 PRS-01 USIA-06 AID-05 COME-00 FRB-03
TRSE-00 XMB-02 OPIC-03 SP-02 LAB-04 SIL-01 OMB-01
/102 R

DRAFTED BY OES/APT/BMP:CGORSEY:EH
APPROVED BY OES/APT/BMP:JFRY
EUR/WE:MDURKEE
L/OES:CSIEGAL

-----082159Z 000720 /67

P 082058Z APR 77
FM SECSTATE WASHDC
TO AMEMBASSY MADRID PRIORITY

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E.O. 11652: N/A

TAGS: TGEN, SP

SUBJECT: 1976 TREATY - SCIENTIFIC AND TECHNOLOGICAL COOP-
ERATION: PATENT RIGHTS

REF: A) MADRID 1537, B) MADRID 2329

1. FOREIGN ASSISTANCE ACT, FROM WHICH SPANISH S&T FUNDS
ARE DERIVED, IS SILENT ON PATENT RIGHTS. THEREFORE,
AS GENERAL MATTER, COMMITTEE FREE TO AGREE TO "GUIDING PRIN-
CIPLES" FOR ALLOCATION OF PATENT RIGHTS. HOWEVER,
LEGISLATIVE AUTHORITY FOR CERTAIN USG AGENCIES DOES
SPECIFICALLY PROVIDE THAT PATENT RIGHTS MUST ACCRUE TO USG
WHEN USG FINANCES RESEARCH ACTIVITIES. WHEN AGENCIES
SUBJECT TO SUCH LEGISLATION ENTER INTO RESEARCH AGREEMENTS,
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THE AGREEMENTS MUST REFLECT SPECIFIC LEGISLATIVE PRO-
VISIONS. IN ANY CASE, US POLICY IS TO RETAIN US PATENT
RIGHTS FOR ANY INVENTIONS OR DISCOVERIES MADE UNDER AGREE-
MENTS FIN-
ANCED WITH US FUNDS.

2. WITH RESPECT TO GUIDING PRINCIPLES GENERALLY

APPLICABLE TO COOPERATIVE RESEARCH PROJECTS AND DIRECT RESEARCH GRANTS, THE DEPARTMENT BELIEVES THAT INTERNATIONAL ENERGY AGENCY (IEA) "GENERAL GUIDELINES CONCERNING

INFORMATION AND INTELLECTUAL PROPERTY" WOULD BE SUITABLE BASIS FOR ALLOCATION OF PATENT RIGHTS IN CURRENT SETTING. BOTH THE US AND SPAIN ARE PARTIES TO THE IEA AGREEMENT. LANGUAGE EMBODYING THE "GUIDING PRINCIPLES" WOULD BE:

"(A) WITH RESPECT TO ANY INVENTION OR DISCOVERY MADE OR CONCEIVED BY PERSONNEL OF ONE PARTY OR ITS CONTRACTORS IN THE COURSE OF COOPERATIVE RESEARCH PROJECTS, OR USING DIRECT GRANTS FROM THE OTHER PARTY, UNDER -- THIS AGREEMENT; (1) EACH PARTY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN OR TO THE MANUFACTURE OF ANY SUCH INVENTION OR DISCOVERY AND A NON-EXCLUSIVE RIGHT TO LICENSE THE SALE OF SUCH INVENTION OR DISCOVERY ON TERMS AND CONDITIONS TO BE AGREED TO ON AN EQUITABLE BASIS RELATED TO THE SHARING OF OBLIGATIONS, CONTRIBUTIONS, RIGHTS, AND BENEFITS OF THE PARTIES, IN ITS OWN COUNTRY; (2) THE PARTIES SHALL AGREE ON THE

ALLOCATION OF RIGHTS, TITLES, AND INTERESTS IN THIRD COUNTRIES, SUCH AGREEMENTS TO BE ON AN EQUITABLE BASIS RELATED TO THE SHARING OF OBLIGATIONS, CONTRIBUTIONS, RIGHTS, AND BENEFITS OF THE PARTIES.

(B) WITH RESPECT TO ANY INVENTION OR DISCOVERY MADE OR CONCEIVED BY PERSONNEL OF ONE PARTY (THE FIRST PARTY) OR ITS CONTRACTOR, AS A DIRECT RESULT OF THE EXCHANGE OF INFORMATION AT MEETINGS OR CONFERENCES, THE PARTY OF LIMITED OFFICIAL USE

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SUCH PERSONNEL SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST -- TO SUCH INVENTION OR DISCOVERY IN ALL COUNTRIES SUBJECT TO A NON-EXCLUSIVE LICENSE OF THE OTHER PARTY FOR THE MANUFACTURE, SALE OR USE OF SUCH INVENTION OR DISCOVERY IN ALL COUNTRIES EXCEPT THAT OF THE FIRST PARTY.

(C) WITH RESPECT TO ANY INVENTION OR DISCOVERY MADE OR CONCEIVED BY THE PERSONNEL OF ONE PARTY ITS CONTRACTORS THAT IS A DIRECT RESULT OF VISITS OR EXCHANGES OF SCIENTISTS OR OTHER EXPERTS BETWEEN THE PARTIES: (1) THE PARTY OF SUCH PERSONNEL SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST IN OR TO ANY SUCH INVENTION OR DISCOVERY IN ITS OWN COUNTRY AND ALL THIRD COUNTRIES, SUBJECT TO A NON-EXCLUSIVE LICENSE OF THE OTHER PARTY FOR THE MANUFACTURE, SALE OR USE OF SUCH INVENTION OR DISCOVERY IN ALL THIRD COUNTRIES; (2) THE OTHER PARTY SHALL ACQUIRE ALL RIGHTS, TITLE AND INTEREST IN SUCH INVENTION OR DISCOVERY IN ITS OWN COUNTRY."

3. THE ABOVE LANGUAGE HAS BEEN STRUCTURED TO COVER BOTH COOPERATIVE RESEARCH AND DIRECT GRANTS UNDER THE S&T AGREE-

MENT. HOWEVER, THERE S NO REASON WHY DIRECT RESEARCH
GRANT PROGRAMS, FOR EXAMPLE, MIGHT NOT BE TREATED DIFFERENT-
LY UNDER INDIVIDUAL MEMORANDA OF UNDERSTANDING. IN CASE
OF DIRECT RESEARCH GRANT PROGRAMS, SINCE WE EXPECT TO BE

FUNDING SPECIFIC ITEMS IN SPANISH INSTITUTIONS' BUDGETS,
WE COULD PROVIDE FOR US PATENT RIGHTS IN THE CONTRACT
ESTABLISHING THE PROGRAM FOR THE SPECIFIC FUNDED ACTIVITY.

4. DEPARTMENT INFORMED BY BUREAU OF MINES THAT ITS SPAN-
ISH COUNTERPART DEVELOPED A SPANISH PATENT ON WASTE MANAGE-
MENT EQUIPMENT AS A RESULT OF ITS WORK WITH BUREAU OF
MINES. IN ABSENCE OF ANY WRITTEN AGREEMENT, SPANISH
AGENCY VOLUNTARILY GAVE BUREAU OF MINES THE US PATENT
RIGHTS.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SCIENTIFIC COOPERATION, POLICIES, TECHNOLOGICAL EXCHANGES, PATENTS, FOREIGN ASSISTANCE PROGRAMS
Control Number: n/a
Copy: SINGLE
Sent Date: 08-Apr-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE079306
Document Source: CORE
Document Unique ID: 00
Drafter: CGORSEY:EH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770123-0876
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770473/aaaaciz.tel
Line Count: 139
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 5e6cbca7-c288-dd11-92da-001cc4696bcc
Office: ORIGIN OES
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 MADRID 1537, 77 MADRID 2329
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2854190
Secure: OPEN
Status: NATIVE
Subject: 1976 TREATY - SCIENTIFIC AND TECHNOLOGICAL COOP- ERATION: PATENT RIGHTS
TAGS: TGEN, EIND, SP, US
To: MADRID
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/5e6cbca7-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009